

### **III. REMARKS**

United States Serial No. 10/589,230 was filed on December 5, 2006. In view of the amendments and remarks set forth herein, Applicants respectfully request reconsideration and allowance of claims 1-17.

#### **Claim Amendments**

New claims 11-17 have been added. Applicant submits that the amended claims introduce no new matter, as the subject matter finds support in the original specification, and original claims 2-10.

#### **35 U.S.C. §102 REJECTIONS**

Claims 1, 2, and 10 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Thomas (U.S. Patent No. 4,629,826) for reasons of record set forth on pages 2-3 of the Office Action. The Office Action specifically alleges that "Thomas discloses a conduit (see figure 2) having a substantially semi-circular outer cross-section (see figure 2) comprising a base portion (22) and a lid portion (20), the lid portion (20) being attached to the base portion (22) by a hinge (24) and having a clip (see figure 2) on the opposite side wherein the hinge (24) is located at an angular elevation from the base of between 10° and 35° (see figure 2)..." Contrary to the Examiner's allegations, the Thomas reference expressly discloses in column 2, lines 7-9, "[o]ne longitudinal side edge thereof junctions with one longitudinal side edge of the cover that includes a flexible bend 24." [Emphasis Added]. Thus, Thomas unequivocally teaches that the junction of the base and cover occurs at a 0° elevation from the base of the cover.

By contrast, present claims 1 and 11 recite “[a] conduit having substantially semi-circular outer cross-section comprising a base portion and a lid portion, the lid portion being attached to the base portion by a hinge and having a clip on the opposite side, wherein the hinge is located at an angular elevation from the base between 10° and 35°...” Claims 1 and 11 describe an assembly attached by a hinge located at an angular elevation between 10° and 35° to allow the top part of the conduit to lie flat against a wall when it is in the open position. Thomas teaches that the base/cover junction of the conduit occurs at the edge of the conduit at a 0° elevation from the base. Because the junction of the base and cover of Thomas occurs at a 0° elevation, the cover portion of the Thomas conduit will not lie flat against a wall when it is in the open position. Thomas makes no disclosure or suggestion that the junction be placed at an angular elevation between 10° and 35°. Therefore Thomas does not anticipate either of claims 1 and 11. Applicants respectfully request the withdrawal of the 35 U.S.C. § 102(b) rejection of claim 1.

MPEP § 2131 states that “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegull Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631...(Fed. Cir. 1987).” MPEP 2100-67. As claims 2 and 10 depend either directly or indirectly from claim 1, Thomas also fails to anticipate these claims. Applicants therefore respectfully request the withdrawal of the 35 U.S.C. § 102(b) rejection of claims 2 and 10.

### **35 U.S.C. §103 REJECTIONS**

Claims 3-5 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Thomas. Applicants respectfully traverse.

Thomas has been discussed above and Applicant's remarks are incorporated by reference and apply equally to the 35 U.S.C. § 103(a) rejection. Claims 3-5 are directed to illustrative angular elevation and clip socket wall length features of the conduit. As discussed above, Thomas makes no disclosure teaching or suggestion whatsoever to position a hinge at an angular elevation from the base to connect the base portion and lid portion of conduit. In fact, Thomas makes no disclosure teaching or suggestion that the bend point 24 be positioned anywhere but at a 0° elevation along the longitudinal edge. Without an elevated hinge, the lid portion in Thomas cannot lie flat against the wall in an open position. Therefore, Applicant asserts that independent claim 1 is non-obvious. Claims 3-5 include the hinge location at an angular elevation feature of claim 1. Because claims 3-5 depend on claim 1 they include the feature of positioning the hinge at an angular elevation from the base portion of the conduit. Therefore, claims 3-5 are also non-obvious. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). ("If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious." MPEP § 2143.03 at page 2100-142.) Applicants respectfully request the withdrawal of the 35 U.S.C. § 103(a) rejection of claims 3-5.

Claims 6 and 7 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Thomas in view of Belcher (US Patent No. 5,274,194). Applicants respectfully traverse.

Thomas has been discussed above and Applicant's remarks are incorporated by reference and apply equally to the 35 U.S.C. § 103(a) rejection. The Office Action alleges, "[i]t would have been obvious to one of ordinary skill in the art at the time the invention was made to make Thomas' conduit with the outer wall clip socket having a retaining lip thereon, which engages with a corresponding retaining groove in the clip as taught by Belcher to provide means for firmly securing the lid portion to the base portion." Applicant submits that the combination of Thomas and Belcher merely results in a conduit construction

having a bend point 24 at a 0° elevation from the base portion of the conduit. On the other hand, present claims 6 and 7 depend from claim 1 and include the feature of the hinge being located at an angular elevation from the base portion of the conduit. The combination of Thomas and Belcher do not include this feature, as neither reference discloses locating a bend or hinge at an angular elevation from the base portion to provide a conduit that can lie flat against a wall when moved to the open position. Applicants therefore respectfully request the withdrawal of the 35 U.S.C. § 103(a) rejection of claims 6 and 7.

Claim 9 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Thomas in view of Sato (US Patent No. 6,545,217). Applicants respectfully traverse.

Thomas has been discussed above and Applicant's remarks are incorporated by reference and apply equally to the 35 U.S.C. § 103(a) rejection. The Office Action alleges, "[i]t would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a sealing gasket on the clip or the clip socket as taught by Sato to provide means from improving the conduit sealing capabilities." Claim 9 depends from claim 1 and therefore includes the feature of the hinge being located at an angular elevation from the base portion of the conduit. Again, Thomas discloses a bend 24 is located at a 0° elevation from the base of the conduit. The addition of Sato does not cure this deficiency. Accordingly, the combination of Thomas and Sato does not disclose or suggest the angular elevation feature in combination with the sealing gasket feature. Applicants respectfully request the withdrawal of the 35 U.S.C. § 103(a) rejection of claim 9.

**Allowable Subject Matter**

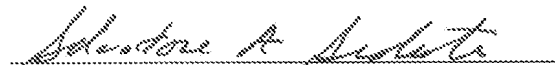
Claim 8 has been objected to as being dependent upon a rejected base claim, but would be allowed if rewritten in independent form including all of the limitations of the base claim and any intervening claims. New claim 11 has been added, which represents original claim 8 rewritten in independent form. New claims 12-17 have been added and depend on claim 11. Original claim 8 has been retained, as claims 1-10 are allowable for the reasons set forth herein.

**IV. CONCLUSION**

In view of the amendments and remarks set forth hereinabove, Applicants respectfully request reconsideration of the application, withdrawal of the 35 U.S.C. § 102(b) and 35 U.S.C. § 103(a) rejections, and request that a Formal Notice of Allowance be issued for claims 1-17.

Should there be any questions regarding the above remarks, Applicant's undersigned attorney would welcome a telephone call.

Respectfully submitted,



Salvatore A. Sidoti, Esq. (Reg. No. 43,921)

Curatolo Sidoti Co., LPA

Customer Number 23575

24500 Center Ridge Road, Suite 280

Cleveland, Ohio 44145

Telephone: 440.808.0011

Facsimile: 440.808.0657

Attorney for Applicant

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Date